

PRELIMINARY DETERMINATION

NOTICE OF INTENDED REGULATORY ACTION

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND SUBSTANCE ABUSE PROFESSIONALS

DEPARTMENT OF HEALTH PROFESSIONS

ITEM 1: SPECIFIC REASON FOR THE PROPOSED REGULATION

During its recent review of its regulations in response to a petition for rulemaking, the board identified two shortcomings in its regulations that it would like to address in regulatory review:

- The residency requirement set forth in 18 VAC 115-50-60 does not specify competency areas.
- Although the board's intent in specifying client contact hours with couples and families during the residency was for these hours to include specific marriage and family therapy issues and the use of marriage and family therapy systems theory, this intent is not clearly stated, and may not be enforceable.

ITEM 2: LEGAL AUTHORITY FOR REGULATION

§ 54.1-2400 provides statutory authority for the Board to promulgate regulations that establish qualifications for licensure, collect fees and take disciplinary action against regulated entities.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.

3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

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18 VAC 115-50-10 et seq.

4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

§ 54.1-3500 sets forth the scope of practice for marriage and family therapists.

§ 54.1-3500 Definitions

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Professionals.

"Marriage and family therapist" means a person trained in the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques.

"Marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques and delivery of services to individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.

"Practice of marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems

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through the application of therapeutic and family systems theories and techniques, which shall include assessment, treatment, and referral activities.

§ 54.1-3503 establishes the Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Professionals and mandates that the Board regulate the profession of marriage and family therapy.

§ 54.1-3503. Board of Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals

The Board of Licensed Professional Counselors, Marriage and Family Therapists, and Substance Abuse Treatment Professionals shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.

The Board shall consist of fourteen members. Twelve shall be professionals licensed in Virginia, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the twelve professional members, eight shall be professional counselors, two shall be marriage and family therapists, and two shall be licensed substance abuse treatment practitioners. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling, substance abuse treatment or marriage and family therapy in an accredited college or university in this Commonwealth, and two professional counselors engaged in full-time private practice. However, the marriage and family therapists initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, and shall be clinical members of the American Association for Marriage and Family Therapy. The licensed substance abuse treatment practitioners initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, shall be active members of the Virginia Association of Alcoholism and Drug Abuse Counselors and shall have a master's degree in substance abuse or a substantially equivalent master's degree.

The terms of the members of the Board shall be four years.

§54.1-3505 mandates that the Board establish requirements for licensure of marriage and family therapists and sets parameters for the education credit hour, experience hour and supervision hour requirements.

§54.1-3505. Specific powers and duties of the Board. In addition to the powers granted in §54.1-2400, the Board shall have the following powers and duties:

6. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour and clinical supervision hour requirements for professional counselors.

§54.1-3506 establishes the licensure requirement to practice marriage and family therapy.

§ 54.1-3506. License required.

In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license; however,

no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § 54.1-3505. The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.

Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § 54.1-3501, shall render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

ITEM 3: REASONING FOR CONTEMPLATED REGULATION

In the past year, the board has been involved in review of its regulations for marriage and family therapy and professional counselor licensure, and has been working on new regulations for licensure of substance abuse treatment professionals. This has provided the board an opportunity to compare and contrast its existing rules and work towards better consistency among its licensure regulations.

A deficiency the board identified in its existing regulations for marriage and family therapist licensure is that the residency requirement does not clearly indicate that the theory base unique to marriage and family therapy (which is the basis for this distinct license) must be covered in the residency. Under the current regulations, the board has no way to ensure that established competency areas in marriage and family therapy were covered in the residency, or that sufficient hours in the use of the systems theory were accomplished. To rectify the problem, the board would like to consider specifying competency areas to be covered in the residency, and develop specific contact hours working with marriage and family therapy issues.

ITEM 4: ALTERNATIVES TO REGULATION

In developing residency competency areas and systems theory contact hours, the board will consider the experience requirements of professional associations in marriage and family therapy, the requirements of other state licensing boards and any public comment received during the course of its review.

ITEM 5: EFFECT ON FAMILY FORMATION, STABILITY AND

AUTONOMY

Resolving the identified deficiencies in the residency requirements will help the board to ensure that new licensees are proficient in the application of marriage and family systems theory. Families in need will benefit from the assurance of competent practitioners in this distinct profession.